

This letter discusses advance trade-ins relating to motor vehicles purchased at an auction. See 86 Ill. Adm. Code 130.455. (This is a GIL.)

August 26, 2008

Dear Xxxxx:

This letter is in response to your letter dated August 6, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

INDIVIDUAL suggested we send this letter to you for your review.

TAXPAYER respectfully requests a Private Letter Ruling ('PRL') [sic] from the Illinois Department of Revenue ('Department') in response to the specific inquiries contained in this letter concerning the application of the Department's trade-in rules for motor vehicles.

Facts:

Taxpayer regularly purchase [sic] off-lease vehicles from various finance companies at auctions. At the time of the purchase of the off-lease vehicles at auction, Taxpayer obtains an advance trade-in credit by entering into a contract with an individual finance company that require [sic] the finance company to purchase another vehicle from the Taxpayer within 9 months. When that individual finance company does purchase a Vehicle from Taxpayer during the following 9 months, the taxable selling price of the vehicle being purchased is reduced by the value of the advanced trade-in credit.

For example, Taxpayer purchases off-lease vehicles from GMAC at auction and obtains the enclosed written agreement which included the advance trade-in credit. If GMAC purchases a vehicle from Taxpayer during the next nine months the taxable selling price

of that [sic] will be reduced by the value in the attached advance trade-in credit agreement.

Issue:

Please confirm that the advanced trade-in credit is still available even though the off-lease vehicle was purchased at the auction.

Applicable Law:

The Retailer's [sic] Occupation Tax imposes a tax upon persons engaged in the occupation of selling tangible personal property at retail. See 86 Ill. Adm. Code 130.101 et al. A trade-in credit is available when the purchaser trades [sic] in tangible personal property of like kind and character as that which is being sold. The term 'like kind and character' includes, but is not limited to, the trading of any kind of motor vehicle on the purchase of any kind of motor vehicle, or the trading of any kind of farm equipment on the purchase of any kind of farm equipment, while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailer's [sic] Occupation Tax and Use Tax as an isolated or occasional sale. See 86 Ill. Adm. Code 130.425(b).

A transaction may constitute an advance trade-in, if, at the time the vehicle is traded to the dealer, the purchaser becomes [sic] contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9-month credit period. Advance trade credits are non-transferable see 86 Ill. Adm. Code 130.455(d).

Pursuant to 86 Ill. Adm. Code 130.455(d)(3), documentation evidencing an advance trade-in transaction must include the following:

- 1) The contract establishing the value of or credit given for a trade-in vehicle:
- 2) The obligation to purchase a vehicle:
- 3) The date of expiration of the advance trade-in credit:
- 4) The bill of sale for the trade-in vehicle:
- 5) The appropriate sales or use tax return evidencing the purchase of the new or Use [sic] vehicle; and
- 6) Recording the application of the advance trade-in credit:

Closing:

Thank you for your time and consideration in reviewing and responding to this request. If you have any questions or concerns, please do not hesitate to call.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). Your letter provides insufficient information regarding the acquisition of the off-lease vehicles and the subsequent vehicle purchase by the finance company to enable the

Department to render a private letter ruling. In addition, the written agreement referred to your letter was not received by the Department. Therefore, it is the Department's position that we must decline to issue a Private Letter Ruling. However, we hope the following will be helpful in addressing your question.

Advanced trade-ins are allowed by the Department as an accommodation for car dealers. The Department's regulation regarding Motor Vehicle Leasing and Trade-in Allowances is set forth in 86 Ill. Adm. Code 130.455. Under the regulation, a transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9-month credit period. Advance trade credits are nontransferable. 86 Ill. Adm. Code 130.455(d).

Documentation evidencing an advance trade-in transaction must include the following: (1) the contract establishing the value of or credit given for a traded-in vehicle; (2) the obligation to purchase a vehicle; (3) the date of expiration of the advance trade-in credit; (4) the bill of sale for the traded-in vehicle; and (5) the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade. See 86 Ill. Adm. Code 130.455(c)(1)(C) and 130.455(d)(3).

Generally, advance trade-ins are not available in auction situations. The only exception occurs when the seller of the motor vehicle at the time of the auction is a disclosed principal (see 86 Ill. Adm. Code 130.1915(b)); at or before the time of bidding, the seller offers to all bidders, as part of the sale of the motor vehicle, to become contractually bound to the winning bidder to purchase another motor vehicle from the winning bidder within 9 months from the date of the auction sale; the winning bidder accepts the seller's offer and the seller becomes contractually bound to purchase another motor vehicle from that winning bidder within 9 months from the date of the auction sale; and all other requirements of Section 130.455(d) have been met.

The following example may be helpful: Automobile-leasing company L owns an automobile that it leases to a lessee for a period of two years. At the end of the two-year lease, the lessee declines to purchase the vehicle and returns it to automobile leasing company L. Automobile-leasing company L decides to sell the automobile at auction. Automobile-leasing company L is disclosed as the principal at the auction under the requirements of subsection (b) of Section 130.1915. Automobile-leasing company L provides to the auctioneer a written offer that would bind the automobile-leasing company L to purchase a different automobile from the winning bidder. The offer for sale of the vehicle at auction includes the offer to bind the automobile-leasing company L to purchase a different automobile from the winning bidder within 9 months of the auction. Automobile dealership D is the winning bidder for the automobile. If, at the time of the completion of the auction sale, automobile dealership D accepts the offer of automobile-leasing company L and automobile-leasing company L becomes contractually bound to purchase a vehicle from automobile dealership D within 9 months after the auction sale and otherwise meets all of the requirements of Section 130.455(d), then the auction sale of the automobile to automobile dealership D will qualify as an advance trade-in.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk